



Montoya, Darlene <dmontoya@nmag.gov>

RE: Request for Policies & Procedures Related to Officer-Involved Shooting and Other Use-of-Force Incidents

3 messages

Montoya, Darlene <dmontoya@nmag.gov>
To: Marshal White <d.white@sanysidronm.us>

Mon, Dec 19, 2016 at 1:23 PM

Marshal:

Attached please find correspondence from the Law Enforcement Board Subcommittee regarding the above-referenced matter.

If you have any questions or concerns, please do not hesitate to contact me. Thank you.

—
Darlene Montoya, Administrator
New Mexico Attorney General's Office
408 Galisteo Street
Santa Fe, New Mexico 87501
(505) 490-4854



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87K

Marshal White <d.white@sanysidronm.us>
To: "Montoya, Darlene" <dmontoya@nmag.gov>

Wed, Jan 18, 2017 at 11:30 AM

Attached is the SOP requested For the San Ysidro Marshal Department

Thank You

Daniel White

Marshal, Village of San Ysidro

P.O. Box 28

San Ysidro, NM 87053

(575) 834-7481

This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission. If verification is required please request a hard-copy version. San Ysidro Marshal Department, P.O. Box 28, San Ysidro, NM 87053

From: Montoya, Darlene [mailto:dmontoya@nmag.gov]

Sent: Monday, December 19, 2016 1:23 PM

To: Marshal White <d.white@sanysidronm.us>

Subject: RE: Request for Policies & Procedures Related to Officer-Involved Shooting and Other Use-of-Force Incidents

[Quoted text hidden]

2 attachments



1-08 COMPLAINTS AGAINST POLICE PERSONNEL.pdf

79K



2-06 USE OF FORCE.pdf

88K

Montoya, Darlene <dmontoya@nmag.gov>

To: d.white@sanysidronm.us

Wed, Jan 18, 2017 at 1:28 PM


Your message

To: Montoya, Darlene

Subject: RE: Request for Policies & Procedures Related to Officer-Involved Shooting and Other Use-of-Force Incidents

Sent: 1/18/17, 11:30:44 AM MST

was read on 1/18/17, 1:28:17 PM MST

POLICE DEPARTMENT		RULES AND REGULATIONS	
SUBJECT: COMPLAINTS AGAINST POLICE PERSONNEL		NUMBER: 1-8	
EFFECTIVE DATE: JAN 31, 2003		REVIEW DATE:	
AMENDS/SUPERSEDES:		APPROVED:  Chief of Police	
CALEA STANDARDS: 52.1, 52.2, 52.3		NMSA 29-14-4, through 29-14-11	

NOTE:

This rule or regulation is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

INDEX WORDS:

Board of inquiry
Criminal misconduct
Complaint
Due process
Financial disclosure statements
Internal investigations
Lineups, photographs of employees
Medical/laboratory examinations of employees

I. POLICY:

The image of the department depends on the personal integrity and discipline of all departmental employees. To a large degree, the public image of this department is determined by the professional response of the department to allegations of misconduct against it or its employees. The department must competently and professionally investigate all allegations of misfeasance, malfeasance, nonfeasance by employees and complaints bearing on the department's response to community needs.

II. PURPOSE:

To describe procedures for making complaints against department personnel, for investigating complaints, and to list and define the dispositions of complaints.

III. PROCEDURES - GENERAL

- A. The department encourages citizens to bring forward legitimate grievances regarding misconduct by employees. Department members shall receive complaints

courteously and shall handle them efficiently. All officers are obligated to explain to inquiring citizens the complaint procedures.

- B. The department recognizes that its personnel are often subject to intense pressures in the discharge of their duties. The employee must remain neutral under circumstances that are likely to generate tension, excitement, and emotion. In such situations, words, actions, and events frequently result in misunderstanding and confusion. It is to the advantage of all employees to have a procedure for the investigation of the more serious allegations and underlying circumstances so that complaints can be resolved in light of the complicated pressures of police work.
- C. A copy of "How to Make A Complaint" will be posted in the public area of the police department, provided to media representatives, and may be given to any citizen requesting information on how to make a complaint against the department or an employee of the department. A copy of "How to Make a Complaint" is found in the appendix to this order.
- D. Responsibility for handling complaints:
 - 1. As a rule, complaints regarding law enforcement operations will be handled through the chain of command. Complaints involving how police service is provided or a failure to provide service or improper attitudes or behavior normally will be investigated and handled by the Lieutenant or by the chief of police. The chief of police may ask an investigator from another agency or the State Police to undertake the investigation.
 - 2. Complaints alleging improper police conduct, brutality, or misconduct involving several personnel or supervisory personnel shall be handled as an internal affairs matter, and shall be investigated by an outside agency upon request of the chief of police.
- E. Receipt of complaints:
 - 1. Complaints, regardless of nature, can be logged in person, by mail, or by phone at any time. As part of the follow-up investigative activity, persons making complaints by mail or phone normally shall be interviewed and a written, signed complaint prepared. A copy of the complaint form is found in the appendix to this order. Anonymous complaints shall be followed up to the extent possible.

2. Every effort shall be made to facilitate the convenient, courteous, and prompt receipt and processing of citizen complaints. An employee of the department who interferes with, discourages or delays the making of such complaints shall be subject to disciplinary action.
3. Normally, a citizen with a complaint will be referred to the chief of police who shall assist the citizen in recording pertinent information. The chief of police will, if appropriate, conduct a preliminary investigation.
4. If the Lieutenant or other investigators determine that the complainant is apparently under the influence of an intoxicant or drug, or apparently suffers from a mental disorder, or displays any other trait or condition bearing on his or her credibility, he shall note such conditions on the reverse side of the complaint form. Any visible marks or injuries relative to the allegation shall be noted and photographed.
 - a. Prisoners or arrestees also may make complaints, although circumstances may require a department representative to meet the complainant at a jail or prison for an interview. If appropriate, the police representative will have photographs taken of prisoners' injuries.
5. A department member receiving a citizen complaint through U.S. mail shall place the correspondence and envelope in a sealed envelope and forward it to the chief of police, who will determine investigative responsibility.
6. Complaints received by telephone will be courteously and promptly referred to the chief of police. The employee shall record the name and telephone number of the complainant and state that the chief of police or, if unavailable, the Lieutenant shall call back as soon as practicable.
7. Complaints normally will not be accepted more than thirty days after the alleged incident, with the following exceptions:
 - a. When the act complained of is a criminal violation in which case the criminal statute of limitations will prevail.
 - b. When the complaining person can show good cause for not making the complaint earlier.
8. The above procedure may also be used when department employees desire to enter a complaint

against any other employee governed by this order.

F. Disposition of Complaints:

The chief of police shall:

1. Notify the complainant, in writing, as soon as practicable, that the department acknowledges receipt of the complaint, that it is under investigation, that the investigation will be completed within thirty days.
2. Maintain complaint files separate from personnel files.
3. Take appropriate disciplinary action following the investigation.

G. Disposition of serious complaint:

1. Serious complaints allege violations of the law or gross negligence in violating or failing to enforce civil rights of citizens. The term "serious complaint," in this manual, is synonymous with "internal investigation." Internal investigations examine alleged brutality, gross excesses of legal authority, or allegations, involving supervisory personnel or multiple police personnel.
2. In such cases, the chief of police shall:
 - a. Record, register, control or cause to be recorded, registered, or controlled the investigations of employees;
 - B. Maintain confidential records of same.
 - C. Ensure that the investigations conducted according to New Mexico law.
 - D. Maintain close liaison with the District Attorney in investigating alleged criminal conduct. Where liability is at issue, the chief shall similarly maintain contact with the Village attorney.

IV. PROCEDURES: Investigative

Two types of investigations may take place: administrative or criminal. Different rules govern interviews of employees in each case.

- A. Interview for administrative purposes: If the chief of police wishes to compel an employee to answer questions directly related to his or her official duties and the chief is willing to forego the use of such answers in a criminal prosecution, the chief of police or another

interviewer shall advise the employee that:

1. The purpose of the interview is to obtain information to determine whether disciplinary action is warranted. The answers obtained may be used in disciplinary proceedings resulting in reprimand, demotion, suspension, or dismissal.
2. All questions specifically related to employment must be fully and truthfully answered. Refusal to answer may result in disciplinary action.
3. No answers given nor any information obtained by reason of such statements are admissible against the employee in any criminal proceeding.

a. Read to the employee the following:

" I wish to advise you that you are being questioned as part of an official investigation of the police department. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and the constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself.

I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to departmental charges which could result in your dismissal from the police department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding.

However, these statements may be used against you in relation to subsequent departmental charges."

4. In an interview for administrative purpose, no Miranda rights are required. Further, the foregoing rules are inconsistent with Miranda in that employees' statements cannot be used as evidence. Further, as the interview does not serve criminal prosecution, the employee has no Sixth Amendment right to counsel.

a. The governing case is Garrity v. New Jersey, 385 U.S. 483, 87 S. Ct. 616 (1967).

b. The interviewing officers shall use the "administrative proceedings rights" form found in the appendix to this instruction.

- B. Interviews for criminal investigative purposes: If the chief of police believes that criminal prosecutions are

possible and wishes to use statements against the employee in a criminal proceeding, or at least wishes to maintain the option of their use, he or another interviewer shall:

1. Give the employee Miranda rights.
2. Advise the employee that if he asserts his right not to answer questions, no adverse administrative action will be taken based upon the refusal.
 - a. If the employee decides to answer questions at this point, the responses may be used in both criminal and disciplinary proceedings.
 - b. Note that the Miranda admonition includes the provision that a lawyer may be present at an interview. Although technically the employee has no right to counsel until the employee has been criminally charged or his or her freedom of action has been deprived, the department wishes the employee to have the option. The department wishes no possibility to arise in which its actions might be construed coercive.
 - c. The governing case is Gardner v. Broderick, 392 U.S. 273, 88S. Ct. 1913, 1916 (1968). The case made clear that a public employee may not be fired for asserting his Fifth Amendment right not to incriminate himself.

V. INVESTIGATIVE TOOLS AND RESOURCES

In addition to interviews of the employee and witnesses, the chief of police may require other activities in support of a complaint investigation or internal investigation, including:

A. Medical and Laboratory Examination

The chief of police or officer in authority may, based on his observation, require a department employee to submit to a test for alcohol or drug use while on duty. The results may be used in a disciplinary hearing. Refusal to submit to the examination will be grounds for disciplinary action and may result in the employee's dismissal.

1. If the employee is believed to be under the influence of alcohol, a licensed breathalyzer operator shall administer the test. The chief of police or officer in authority shall witness the test and sign the report.
2. If the employee has a reading of .02 or higher, or there is other competent evidence of impaired abilities to perform duties, the officer shall be

relieved of duty by the chief of police or officer in authority.

3. If the employee is believed to be under the influence of self administered drugs, he may be compelled to submit to a blood and/or urine test. The test shall be administered under medical supervision where hygienic safeguards are met. The sample will be handled using the same safeguards as evidence in a criminal process.
4. If the test shows positive results, or there is other competent evidence of impaired abilities to perform duties, the officer shall be relieved of duty as soon as possible by the chief of police or other officers in authority.
5. If an employee refuses to submit to a test, (alcohol or drugs) then the chief of police or other officer in authority will immediately relieve the employee from duty for failure to cooperate in an administrative investigation.

B. Photograph and Lineup Identification Procedures:

Officers may be required to stand in a lineup for viewing by citizens for the purpose of identifying an employee accused of misconduct. Refusal to stand in a properly conducted lineup is grounds for disciplinary action and may result in dismissal.

1. A photo identification book of department employees may be maintained for the purpose of identification by citizens of an employee accused of misconduct. Photographs of employees for the identification book are required by the department and shall be used when narrowly related to the employee's job.
2. Photographs or videotape pictures of employees, with or without an employee's consent, may be taken for the purpose of internal investigations as related to the employee's job when the employee is suspected of misconduct.

C. Financial Disclosure Statements:

An employee may be compelled to make financial disclosure statements when directly and narrowly related to allegations of misconduct involving any unlawful financial gain. Any evidence gained during the investigation of an administrative matter cannot be used in any criminal proceeding.

Use of polygraph examinations in internal investigations shall be in accordance with the

departmental policy regarding its use (see following paragraph).

D. Polygraph

1. Policy: All police personnel, effective with the promulgation of this policy, shall be required to submit to a polygraph when ordered to do so by the chief of police, or by another superior officer with the authorization of the police chief.
2. The police chief or his designee may order employees to take a polygraph when charged with a Category III offense.
3. The results of the polygraph examination shall not be used as the sole basis for disciplinary action against any employee.
4. Any polygraph examination administered under the provisions of this policy and procedure shall be administered by a private contractor licensed to administer polygraph examinations in the State of New Mexico or must be a licensed examiner from another law enforcement agency.
5. Refusal to submit to a polygraph examination or to answer all questions pertaining to the charges in the polygraph examination shall be grounds for disciplinary action and may result in dismissal from the department.
6. In order to comply with state (NMSA 29-14-4 and 29-14-5) and federal (privilege against self-incrimination) law, the following information must be provided to the officer asked to submit to such examination:
 - a. The nature of the inquiry, the name and rank of the investigating officer, and the name and rank of any person present during the examination.
 - b. That his answers will not be used to prosecute him.
 - c. That he may refuse to take the polygraph or examination to answer any questions, however, such refusal shall be grounds for disciplinary action which may include dismissal.
 - d. That answers given during the polygraph examination do not constitute a waiver of the privilege against self-incrimination as it relates to criminal matters.

- e. A Polygraph Examination Acknowledgement of Rights form must be initialed and signed in the spaces indicated (see appendix to this instruction). Refusal to do so shall be grounds for disciplinary action which may result in dismissal.
- 7. The declaration is here made that the intent of all of the above is that any person who refuses to submit to polygraph examination or refuses to answer any questions pertaining to the charges in such an examination may be terminated from employment.

VI. ADJUDICATION OF COMPLAINTS:

- A. The chief of police will classify completed internal affairs investigations as:
 - 1. Unfounded - no truth to allegations.
 - 2. Exonerated - allegations true, but result of adherence to proper and appropriate police procedures and techniques.
 - 3. Not sustained - unable to verify the truth of the matters under investigation.
 - 4. Sustained - allegations true.
 - 5. Completed investigations classified as unfounded, exonerated or not sustained will be maintained in internal affairs files in the chief's office. Sustained complaints will be filed in the individual employee's department personnel file with a copy in the internal affairs files.

- B. Disciplinary records:

Category I offenses shall be purged two years after adjudication, if no further offenses in any category have occurred. Category II offense records similarly shall be purged after three years. Category III records are permanently retained.

- C. Disciplinary action taken shall be determined by the seriousness of the violation or the extent of injury to the victim. It shall be commensurate with the circumstances surrounding the incident and in consideration of the officer's service record and prior sustained complaints. See RR1-7 for details.

VII. DUE PROCESS:

- A. The Fourteenth Amendment to the Constitution provides that a citizen may not be deprived of "life, liberty, or property, without due process

of law." Public employees have a limited property interest in continued employment sufficient to require due process in any administrative proceedings that might result in suspension or dismissal.

- B. The department seeks to observe due process of law in the philosophy of the 14th Amendment in any disciplinary proceeding. Nevertheless, the foregoing rules circumscribe when legal counsel may or may not be used during interviews of employees suspected of misconduct.
- C. Despite an employee's limited property interest in his job, as described in paragraph A, the simple fact that an employee has held a job for years does not entitle him or her to keep it.
- D. The department recognizes that an employee, though dismissed or suspended, may have a liberty interest to enjoy future employment elsewhere and, if suspended or dismissed, should have an opportunity to set forth his or her point of view for name-clearing purposes. In view of this interest, the department affords an employee a hearing in accordance with the provisions of RR 1-7.

IX. BOARD OF INQUIRY:

- A. The chief of police may invoke a board of inquiry at any time for any disciplinary purpose. The board will serve to review facts or information to resolve an allegation of misconduct. A board will always be convened in the event of a police shooting, death or serious injury of an officer or citizen killed or injured incident to police action, or accident involving a police vehicle.
 - 1. A board of inquiry shall consist of at least three people, including the Village Mayor, chief of police (unless involved in the incident under scrutiny), plus a law enforcement officer of the rank of sergeant or above from nearby agency or Department of State Police.
 - 2. The board shall recommend a decision to the chief of police, or if the chief is involved in the incident, to the Village Mayor.
 - 3. The board's proceedings will not be recorded and transcribed, however, a board chairman shall be selected from among the board members who shall write, in a memorandum to file, a summary of the proceedings, names of board members, and the board's recommendations.

HOW TO MAKE A COMPLAINT

1. If you wish to make a complaint about the actions of a police officer or about any aspect of police operations, please:
 - a. Come to the department and tell any employee that you want to make a complaint; or
 - b. Call the department and tell the person answering the phone that you want to make a complaint; or
 - c. Write your complaint and mail it to the chief of police.
2. A supervisory officer will assist you in filling out a report of complaint against police personnel form. This form asks you to identify yourself and then to give specific details about your complaint.
3. Your complaint will then be investigated. You may be contacted and asked additional questions about your complaint.

Appendix to RR 1-9

REPORT OF COMPLAINT AGAINST POLICE PERSONNEL

CONFIDENTIAL

Name of Complainant: _____

At what address can you be contacted?: _____

What phone number? Residence: _____ Employment: _____

Date of time of incident: _____

Location of incident: _____

Name of officer(s) against whom complaint is being filed, or
other identifying marks (car number, badge number, etc.)

Name: _____ Rank: _____

I.D. # _____ Badge: _____

Vehicle: _____

Name(s)/address/phone number or other identifying Information:

Statement of allegation:

(If further space is needed use reverse side of sheet)

I understand that this statement of complaint will be submitted to the San Ysidro Marshal's Department and may be the basis for an investigation. Further, I sincerely and truly declare and affirm that the facts contained herein are complete, accurate, and true to the best of my knowledge and belief. Further, I declare and affirm that my statement has been made by me voluntarily without persuasion, coercion, or promise of any kind.

I understand that, under the regulations of the police department, the officer against whom this complaint is filed may be entitled to request a hearing before a board of inquiry. By signing and filing this complaint, I hereby agree to appear before a board of inquiry, if one is requested by an officer, and to testify under oath concerning all matters relevant to this complaint.

Signature of Complainant Date

____ Check if complainant refused to sign

Signature of Person Receiving Complaint Date and Time

Received: _____

**ADMINISTRATIVE PROCEEDINGS RIGHTS
NOTICE OF ALLEGATIONS**

NAME _____ DATE _____
TIME _____

The New Mexico State Statute 29-14-4 provides that whenever an investigation by an agency focuses on matters which could lead to the dismissal, demotion, suspension or transfer for punitive reasons of a law enforcement officer, the following conditions shall be compiled with:

1. Any questions of the officer shall take place at a reasonable time and place as designated by the investigating officer, preferably when the officer under investigation is on duty and at the police station
2. Before questioning the officer, he shall be informed of (1) the name and rank of the investigating officer and of any individual to be present during the questioning and (2) the nature of the investigation.

Departmental policy provides that:

1. You are entitled to read the complaint lodged by the complainant.
2. Refusal to answer all questions pertaining to the allegations made by the complainant, either orally or in writing, shall be grounds for disciplinary action and may result in dismissal from the department.
3. The answers given during the investigation of an administrative matter will not be used against you in any criminal proceedings.
4. The answers given do not constitute a waiver of your privilege against self-incrimination as related to criminal matters.
5. Before being formally charged, during an administrative investigation, no attorney will be permitted to be present.

Accordingly, you are hereby advised that the following allegations have been directed to you:

COMPLAINANT(S): 1. _____
2. _____

The undersigned hereby acknowledges receipt in writing of the charges or allegations against him and his rights as pertaining to

administrative proceedings.

Signature

WITNESSES:

Appendix to RR 1-9

POLYGRAPH EXAMINATION ACKNOWLEDGEMENT OF RIGHTS

I, _____ have been ordered
by _____

_____ to submit to a polygraph
examination as a condition of employment in connection with the
investigation of _____

_____.

I understand that my answers to such examination, as they
relate to the above referenced investigation, will not be used to
prosecute me. _____

(initial)

I understand my refusal to submit to such examination and/or
to answer questions pursuant to such examination shall lead to
disciplinary action which may include termination of my
employment. _____ (initial)

I understand that my responses do not constitute a waiver of
my privilege against self-incrimination as it relates to criminal
matters. _____ (initial)

I understand my refusal to sign this form shall lead to
disciplinary action which may include termination of my
employment. _____ (initial)

Employee Signature

Witness Signature

Date

Date

CERTIFICATE TO BE COMPLETED IN EVENT OF REFUSAL TO SIGN FORM

I, _____, hereby certify this form
(Name and Rank)

was presented to _____ on this date in
(Name and Rank)

connection with the above referenced investigation, that the
contents of the form were made known to him, and that failure to
sign the form was grounds for disciplinary action, including
dismissal from employment, said _____

refused in my presence to sign this form.


(Employee Signature)

(Witness Signature)

(Date)

(Date)

Appendix to RR 1-9

POLICE DEPARTMENT		GENERAL ORDERS	
SUBJECT: Use of Force		NUMBER: 2-6	
EFFECTIVE DATE: JAN 31, 2003		REVIEW DATE:	
AMENDS/SUPERSEDES		APPROVED:  Chief of Police	
CALEA STANDARDS: 1.3, 41.2		NMSA	

NOTE

This rule or regulation is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third-party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

INDEX WORDS

[Choke holds](#)

[Firearms](#)

[Qualification](#)

Force

[Deadly](#)

[Excessive](#)

[Non-deadly](#)

[Prohibited acts](#)

[Reporting use of](#)

[Use of \(general\)](#)

Force (cont'd)

[Vehicles \(firing at/from\)](#)

[Oleoresin capsicum \(OC\)](#)

[Pepper spray](#)

[Baton](#)

[Shotguns](#)

[Tear gas](#)

[Weapons](#)

[Off-duty](#)

[On-duty](#)

I. POLICY

Officers are confronted daily with situations requiring the use of force to effect an arrest or ensure public safety. The degree of force used depends on what the officer perceives as reasonable and necessary under the circumstances at the time he or she decides to use force. Except for deadly force, the application of any degree of force is justified only when the officer reasonably believes that it is necessary

- A. to prevent the escape from custody, make an arrest or an investigative detention of a person the officer believes has committed a crime; or

- B. to defend himself or herself or another from what the officer believes is the use of force while trying to arrest another, prevent his or her escape, or otherwise lawfully take the person into custody.

Facts or circumstances unknown to the officer shall not be considered in later determining whether the force was justified. The department expects officers to observe the following two guidelines in all applications of force:

- A. Employ the minimum force reasonably necessary to accomplish a legal purpose.
- B. Officers may resort to more severe methods of force to overcome either increasing resistance or an increasingly dangerous threat to public safety.

The escalation in the use of force typically follows a pattern: verbal control, compliance techniques (control holds), chemical weapons, defensive tactics (e.g., baton), and finally deadly force. Officers must understand how to recognize increasing or decreasing levels of threat and respond appropriately.

When applying deadly force, officers' objective shall be to stop or incapacitate the suspect, **not to kill**, unless no other choice presents itself. The objective of the use of any force is to overcome the suspect's resistance to an officer's lawful purpose: officers shall avoid unnecessary or excessive applications of force.

Officers shall not unreasonably or unnecessarily endanger themselves or the public when applying this policy.

II. PURPOSE

To establish guidelines governing the use of force and its limitations, and to describe prohibited activities.

III. DEFINITIONS

- A. Deadly force:
 - 1. The firing of a firearm, even though no intent exists to kill or inflict bodily harm.
 - 2. Any force applied in any manner by any means that could reasonably be expected to cause death or

great bodily harm.

- a. "Great bodily harm" means bodily injury which creates a substantial risk of death or which is likely to cause serious permanent disfigurement or loss, or extended impairment of the function of any body member or organ.

B. Non-deadly force:

Force employed which is neither likely to or intended to cause death or serious physical injury.

C. Firearms:

Any weapon from which a projectile is forcibly ejected by an explosive.

D. Reasonable belief:

When facts or circumstances the officer knows, or should know, are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

E. Serious physical injury:

A physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, or impairment of the function of any bodily organ or limb.

F. Excessive force:

Force is excessive when its application is inappropriate to the circumstances, resulting in serious physical injury or death to a suspect. In determining whether force has been excessively applied, the primary concern is whether the on-scene officer reasonably believes that its application was necessary and appropriate. Based on the reasonableness standard, excessive force may be determined based on:

1. the severity of the crime;
2. the nature and extent of the threat posed by the suspect;
3. the degree to which the suspect resists arrest or detention; and

4. any attempts by the suspect to evade arrest by flight.

In evaluating the reasonable application of force, officers must consider their own age, size, strength, skill level with department weapons, state of health, and the number of officers opposing the number of suspects.

IV. PROCEDURES - Non-deadly force

The department trains officers in the use-of-force continuum which emphasizes the recognition of and response to increasing levels of threat. Most instances in which force is applied are non-deadly. Officers shall assess the incident to determine which technique will best bring the situation under control. **Following the application of any method of force, once the situation is contained, officers shall provide or arrange to provide medical help.** The following discussion reinforces key principles from training.

A. Verbal control:

Verbal control refers to the manner in which the officer speaks to a person, which alone can manage a situation. Verbal control includes advice, persuasion, admonitions, or orders. The volume and tone of the officer's speech may also contribute to control without having to resort to another method of force. The department urges the use of verbal commands without the use of profanity or disrespectful or argumentative behavior.

B. Compliance techniques:

At times, uncooperative people who refuse to be taken into custody may only respond to a combination of strength, leverage, take-downs, control holds, or come-alongs with sufficient force to make the lawful arrest without aggravating a suspect's combativeness. The object of this level of force is to gain control and enforce the suspect's compliance while minimizing the risk of injury to officers, bystanders, or the person being placed in custody. Where lesser levels of force appear ineffective, officers may employ hands, fists, feet, knees, and so on in striking an adversary, according to methods sanctioned through training.

C. Chemical agents:

The use of chemical agents is restricted to situations where higher levels of force are unnecessary and lesser levels are inappropriate or ineffective. The only chemical weapon authorized for patrol personnel is the oleoresin capsicum (OC) or "pepper spray." Chemical agents shall be used only to the extent necessary to overcome the resistance of the suspect within training standards. Specialized chemical agents such as concussion grenades or tear gas shall be used only by personnel trained in their application, and then only under direct orders of the on-scene supervisor upon consultation with the chief of police.

1. Chemical sprays shall not be used to threaten to elicit information or persuade people to comply with orders, nor will they be used on people who are handcuffed, secured, and properly in custody.
2. Keep the application to the absolute minimum required to effectively control the subject.
3. Do not use on persons who are sick, intoxicated or who are not in possession of their normal protective reflexes (such as being able to turn away from the applied spray). NOTE: Applying a chemical agent to such persons can result in injury out of proportion to the threat they may present.
4. **If the use of tear gas is authorized by the on-scene supervisor,** observe the following:
 - a. These chemicals are used primarily in dealing with unruly crowds and armed barricaded subjects.
 - b. Gas grenades are used to disperse unruly crowds and induce the surrender of barricaded subjects when negotiations have failed.
 - c. Tear gas gun is used to fire projectiles into the area of an armed, barricaded suspect when the use of hand-tossed grenades is unsafe or impractical.

D. DEFENSIVE TACTICS:

The department authorizes the carrying and use of the

(baton,pr-24,asp) as the only striking weapon for officers: all other forms of striking or punching weapons are prohibited for carrying or use, including but not limited to saps, blackjacks, slapjacks, nunchaku and similar sticks, and brass knuckles. Officers who carry the (baton) shall be certified in its use. The weapon may be used in quelling confrontations involving physical violence where higher levels of force are unnecessary or inappropriate, and lesser levels are inappropriate or ineffective.

1. The (baton) shall not be used to strike handcuffed individuals or to threaten or intimidate people.
2. The (baton) is mainly useful as an instrument to manage various control holds, not as a club or prod.

V. DEADLY FORCE

A. Firearms - general:

1. Firearms may be used:
 - a. In defense of the officer or others from what is reasonably believed to be an immediate threat of death or serious bodily harm; or
 - b. To prevent the escape of a fleeing felon whom the officer has probable cause to believe will pose a significant threat to human life should escape occur. No other reasonable means of capture must be available to the officer in this case without endangering the officer's life or the life of another person.
 - (1) In evaluating a "significant threat," the officer must reasonably believe that the person has either used deadly force in the commission of a crime or may inflict death or serious harm to the officer or others if apprehension is delayed.
 - (2) Where feasible, officers shall identify themselves and give a verbal warning before shooting.
 - d. To kill seriously injured or dangerous animals when no other disposition is reasonably practical. A supervisor's

approval should be sought when possible.

- e. In routine firearm training or practice at an approved range.
- 2. Before using a firearm, officers shall identify themselves and state their intent to shoot, where feasible.

B. Shotgun:

- 1. Due to its wide shot dispersion, the shotgun shall only be used when a possibility exists that the officer will be dealing with an armed suspect, e.g., armed robbery in progress, searching for armed suspects, answering calls when the complainant has indicated that a person is armed.
- 2. The chief of police may approve the use of shotguns on raids and stakeouts when he believes that a threat to human life exists.
- 3. Shotguns shall be encased/mounted and carried in patrol units when not in preparation for use. When the shotgun is not encased/mounted, it shall be carried with the safety on at all times until there is an immediate need to fire the weapon.
- 4. Shotguns shall be removed from vehicles before leaving them at any garage or service department.
- 5. Before beginning a tour of duty or immediately thereafter officers shall inspect the shotgun assigned to the patrol car.
- 6. During regular firearms qualification, each officer shall be required to demonstrate proficiency with it.
- 7. The general rules for the use of firearms above apply to shotguns.

VI. LIMITATIONS ON FORCE

The following acts associated with the use of force are prohibited.

- A. Firing into crowds.
- B. Firing a warning shot.

- C. Firing at or from a moving vehicle, except where the officer reasonably believes that
 - 1. an occupant of the other vehicle is using, or threatening to use, deadly force by a means other than the vehicle; or
 - 2. a vehicle is operated in a manner deliberately intended to strike an officer or a citizen and all other reasonable means of defense have been exhausted (or are not present), including moving out of the path of the vehicle, and the safety of innocent persons would not be unduly jeopardized by the officer's action.
 - 3. Officers shall not fire at or in the direction of a vehicle that no longer poses an immediate threat.
- D. Firing into a building or through doors when the person fired at is not clearly visible unless officers are being fired upon from such building or through such door.
- E. Firing at a suspect when lesser force could be used and the officer believes that the suspect can be apprehended reasonably soon thereafter without the use of deadly force, or when there is any substantial danger to innocent bystanders. **(When in doubt, don't shoot.)**
- F. Application of choke hold or carotid control holds, except when the officer reasonably believes such holds are the only means of protecting him/herself or another person from an imminent threat of serious physical injury or death.
- G. Use of Streamlites or Kel-lites or other flashlights as batons. An officer may use a flashlight or other object designed for a use other than as a weapon **only** to defend him- or herself or another from imminent serious physical injury or death and then **only** if departmentally sanctioned methods are not available or are impractical. The use of a flashlight under such circumstances shall be deemed an application of deadly force.
- H. Carrying or use of a second back-up firearm.
- I. The carrying or use of saps, blackjacks, slapjacks.

- J. Use of deadly force against unarmed, non-dangerous fleeing felons, fleeing misdemeanants, or traffic offenders.
- K. Any use of force not reasonably necessary in the light of the circumstances confronting the officer.
- L. Any forcible enforcement action when off duty except in circumstances which seriously threaten life, valuable property, or public order.

VII. WEAPONS

- A. Duty weapon: While on duty, an officer shall carry a department issued or approved weapon, either a .357 revolver, .40mm, 45mm, or a .9mm semiautomatic pistol. The department shall issue ammunition for the weapon.
 - 1. Any officer who wishes to carry a personally-owned weapon on duty must request permission, in writing, from the chief of police. Weapons shall be inspected and approved by the range instructor. In addition, the weapon shall fire department-issued ammunition and the officer shall qualify with the weapon as well as with department-issued weapons. Officers shall buy ammunition for their personally-owned off-duty weapons.
 - 2. The chief of police shall maintain a record of all weapons used by officers either on or off duty. The record lists weapon descriptions, ammunition type issued, date of issue, and information pertaining to qualifications. Officers shall annually review the records to ensure that they are up to date.
- B. Off-duty weapons: Officers are encouraged, but not required, to carry a handgun when off duty. An officer who elects not to carry a handgun while off duty shall not be subject to disciplinary action if an occasion should arise in which he or she could have taken police action if he were armed.
 - 1. (Exception) Off-duty officers while operating a department vehicle shall be armed with an approved weapon.
 - 2. Officers who carry off-duty weapons must understand that in some social situations (e.g., sports) the carrying of a firearm is inappropriate.

3. Officers who have consumed alcoholic beverages shall not carry an off-duty weapon under any circumstances.
4. Off-duty officers who carry firearms while in plain clothes shall not wear them in any way that allows the public to see them.

C. Qualification:

No officer shall carry or use any firearm, chemical agent, or (baton) unless he or she has received training and demonstrated proficiency in its use.

1. Officers who fail to pass the qualification shall be relieved of their police powers and immediately reassigned to non-enforcement duties.
2. Officers who have taken extensive leave or suffered an illness or injury that could affect the use of firearms shall requalify before returning to enforcement duties.
3. Annual firearms qualification will follow required state standards for daylight and night shooting.

VIII. REPORTING USE OF FORCE

- A. Officers shall document any application of force except for those arising in training or departmental demonstrations.
- B. If officers have employed chemical weapons or any higher degree of force, they shall:
 1. immediately notify the on-duty supervisor or the chief of police (if the on-duty supervisor is unavailable) of any use of physical force.
 2. Submit a memorandum to the chief of police within 24 hours describing the incident and any medical aid rendered, and shall substantiate the force used. The memorandum shall be in addition to any other reports.
- C. Depending on the seriousness of any injury resulting from the application of force, whether to a citizen or

officer, the chief of police shall notify the Village Mayor and, in case of death, the district attorney and the medical examiner.

IX. DEPARTMENTAL RESPONSE

A. Assignment:

Pending administrative review, any officer who has taken the life of another person shall be removed from line-duty assignment for a minimum of three days. This action protects both the officer's and the community's interests until the situation is resolved. The officer will complete a psychological review before being returned to line-duty.

B. Review:

1. The chief of police shall review all reported uses of force to determine whether:
 - a. departmental orders were violated;
 - b. relevant departmental policy was clearly understandable and effective to cover the situation; and
 - c. departmental training was adequate.
2. The chief of police may convene a board of inquiry to examine an incident in which force was applied.
 - a. The board of inquiry will ascertain training and policy needs.

C. Internal investigations:

Internal investigations of serious applications of force (usually of compliance techniques and more severe methods) shall be of two types conducted simultaneously; first, an administrative investigation to determine whether department standards were followed; second, a criminal one to detect lawbreaking. A criminal investigation shall be discontinued whenever the department is satisfied that no misconduct occurred. RR 1-9 details the two types of investigations.

1. Dual internal investigations shall be conducted on all shootings.

D. Psychological services:

Psychological follow-up of post-shooting trauma will normally be directed by the chief of police whenever deemed appropriate. During an internal investigation, the department shall do all within its power to avoid placement of a stigma on the officer who shoots in performance of duty. Following a shooting resulting in a death, the officer shall not return to duty until a psychological evaluation has been conducted, and the officer has received counseling.